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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/417,399	10/13/1999	SUSAN HUBERMAN	MBI-1036	7384

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EXAMINER
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RIMELL, SAMUEL G

ART UNIT	PAPER NUMBER
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2165

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/417,399

Applicant(s)

HUBERMAN ET AL.

Examiner

Sam Rimell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14, 16-18, 20-23 and 25-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-18, 20-23, 25-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
**SAM RIMELL**  
**PRIMARY EXAMINER**

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____  | 6) <input type="checkbox"/> Other: ____                                     |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 11-14, 16-18 and 20-23, 25-32 and 35 are rejected under 35 U.S.C. 102(e) as being anticipated by Pepys (U.S. Patent 6,061,943).

Claim 1: Pepys discloses a book-like structure having a plurality of fabric leaves (12, 14, 16) which are bound together into a single book (FIG. 1). Teething elements (fabric seams 22) are attached to each one of the leaves. The fabric seams are readable as teething elements because Pepys explicitly states that these elements are capable of being safely teathed by an infant (col. 3, lines 55-58 and col. 4, lines 5-8). The teething elements (fabric seams 22) are sized to be inserted in an infant's mouth (col. 4, line 7), have no sharp corners (col. 3, line 57) and are generally safe to an infant (col. 4, lines 5-7). The teething elements are resilient by reason that they resist tearing (col. 4, line 54). The teething elements are elastomeric by reason that they are permanently sewn to a fabric cover that will not retain a deformed shape (col. 5, lines 7-9) and thus returns to its original shape.

Claim 2: Artwork may be provided on the leaves (printing on leaves described at col. 3, lines 15-17).

Claim 3: The teething element may be integrated into the art work (the fabric seam is integrally attached to the leaves containing artwork).

Claim 4: As seen in Fig. 1, the leaves have corner areas and the teething element (fabric seams 22) run along the corner areas.

Claim 5: The teething element does not extend substantially outward from the leaves, by reason that it generally conforms to the leaves.

Claim 6: The teething elements are formed from a cloth material (the seams 22 are formed of fabric).

Claim 7: The teething elements (fabric seams 22) are formed on each of a plurality of pages. Thus, a plurality of teething elements are provided.

Claim 8: The teething elements (fabric seams 22) are textured in the sense that they include stitching that is used to attach the seam to the leaves. The stitching creates a texture. In addition, the fabric itself inherently includes a certain degree of texture.

Claim 11: FIG. 2 illustrates a tether (34) having a knot at its far end. Either the tether or its associated knot are also capable of being teethed upon, thus the knot can be considered another teething element attached to the book. The knot is attached to the book via the tether.

Claim 12: The teething element facilitates gripping of the leaves (col. 4, lines 50-51).

Claim 13: The teething elements (fabric seams 22) inherently have a certain degree of weight and thus may be construed as being weighted. As seen in Fig. 2, the seams permit the end leaves (12, 14) of the book to be maintained in a flat configuration.

Claim 14: See remarks for claim 1. The fabric seams 22 are the claimed gripping means since they are capable of being teethed (col. 3, line 55-58 and col. 4, lines 5-8) as well as gripped (col. 4, line 51).

Claim 16: See remarks for claim 4.

Claim 17: The gripping means is the fabric seam (22). A fabric which is explicitly described as being safe for teething by an infant (col. 3, lines 55-58 and col. 4, lines 5-8) would necessarily be non-toxic.

Claim 18: See remarks for claim 1. The fabric seams 22 are readable as the claimed leaf weight means because they inherently add a certain degree of weight to the leaves and are capable of being teethed (col. 3, lines 55-58 and col. 4, lines 5-8). The phrasing “providing sufficient weight whereby said book-like article will be discouraged from closing when laid open” appears met by the fabric seam teething means. The fabric seams inherently have a certain degree of weight and sufficient structure to allow the book to remain open to a certain degree (see FIG. 2). Since the phrase does not require a specific degree of weight and merely requires “discouragement” from closing (i.e. some undefined minimal amount of resistance), the fabric seam does in fact appear to include these properties.

Claim 20: See remarks for claim 4.

Claim 21: See remarks for claim 17.

Claim 22: The teething elements (fabric seams 22) are resilient in the sense that they resist tearing (col. 4, line 54). They also have a certain elastomeric property by reason that they are attached to book cover leaves that will not retain a deformed shape (col. 3, lines 7-9).

Claim 23: See remarks for claim 8.

Claim 25: See remarks for claim 8.

Claim 26: See remarks for claim 1.

Claim 27: See remarks for claim 22.

Claim 28: See remarks for claim 8.

Claim 29: See remarks for claim 2.

Claim 30: See remarks for claim 3.

Claim 31: See remarks for claim 7.

Claim 32: See remarks for claim 8.

Claim 35: See remarks for claim 11.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 10, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pepys (U.S. Patent 6,061,943) in view of Pfaff (U.S. Patent 4,280,241).

Claim 9: The fabric children's book of Pepys differs from the claims in that it does not disclose specific dimensions. However, Pfaff discloses an analogous children's book formed from soft materials. The dimensions disclosed are a thickness of 2.5 inches (63.5mm), a height of 7.5 inches (190.5 mm) and a width of 6 inches (152.4mm). Pfaff explicitly states that the rationale for using such dimensions is to permit usage by a small child (col. 4, lines 31-33) and simple construction (col. 4, lines 36-37). The smallest dimension of Pfaff's book exceeds every dimension of the test fixture recited, so it is clear that the book cannot penetrate into the opening of the test fixture. It would have been obvious to one of ordinary skill in the art to modify the children's book of Pepys to include the dimensions of the children's book of Pfaff so as to permit usage by children and simple construction, as advantages explicitly recited by Pfaff.

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Claim 10: The smallest dimension on the children's book of Pfaff exceed every dimension of the claimed test fixture, and thus would not penetrate the test fixture. It would have been obvious to one of ordinary skill in the art to modify the children's book of Pepys to include the dimensions from the children's book of Pfaff so as to permit usage by children and simple construction, as advantages explicitly recited by Pfaff.

Claim 33: See remarks for claim 9.

Claim 34: See remarks for claim 10.

Remarks

Applicant's arguments have been considered.

Applicant's amendments have overcome the grounds of rejection under 35 USC 112, second paragraph.

Applicant argues that the book of Pepys makes no disclosure of a teething element or disclosure of placing the elements in an infant's mouth. This argument is incorrect. Col. 3, lines 55-57 makes explicit discussion of a child possibly teething on the rounded corners of the book where the fabric seams are located. Col. 4, lines 5-7 discuss the safety issues associated with placing edges of book in an infant's mouth.

Applicant also argues that it would not have been obvious to modify the fabric seam to produce an elastomeric material. Examiner maintains that the fabric seam of Pepys has elastomeric properties by reason that it is permanently sewn to a fabric cover that is specifically disclosed as resisting deformation (col. 3, lines 7-9). Accordingly, the fabric seam would also resist deformation and can be defined as elastomeric.

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (703) 306-5626.



Sam Rimell  
Primary Examiner  
Art Unit 2175